IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1716 OF 2006
WITH
CRIMINAL APPLICATION NO. 94 OF 2007

ICICI Bank Limited ..Petitioner

Vs.

1. State of Maharashtra and ors. ..Respondents

Mr. Shirish Gupte, Senior Counsel with Mr. Sachin Chandarana and Ms. Rajlakshmi Nair i/by M/s. Manilal Kher and Ambalal and Co. for petitioner.

Mr. Y.S. Shinde, APP for State.

Mr. Nitin Pradhan with Ms. S.D. Khot, Ms. Ameeta Kuttikrishnan, anant Wadgaokar and Mr. Maheen Pradhan for respondent nos.4 and 5.

CORAM: B.H. MARLAPALLE,J.

Reserved on : August 04, 2007.

Pronounced on : August 16, 2007.

P.C.:

1. Heard Mr. Gupte, the learned Senior Counsel with Mr. Sachin Chandarana and Ms. Rajlakshmi Nair for the petitioner-bank and Mr. Nitin Pradhan with Mrs. Khot, Ms. Ameeta Kuttikrishnan for respondent nos.4 and 5. Mr. Shinde, the learned APP appears for the State.

2. The petitioner-bank is aggrieved by the order dated 29/6/2006 passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai, thereby rejecting the application filed under Section 457 of Cr.P.C. for the return of property.

3. The petitioner is a Scheduled Bank and respondent no.3 had opened a Current Account as A/c. No.623505379545 with the petitioner in the name of his firm M/s. Suriyaa International. He had initially presented for discounting two bills of exchange for an aggregate amount of Rs.5,62,50,000/- which were drawn on and accepted by the respondent no.4 and co-accepted by Dena Bank. The said two bills of exchange were honoured by Dena Bank and encashed on 2/2/2005 and 5/2/2005. During the period from December, 2004 to March, 2005 the respondent no.3 submitted the petitioner 27 bills of exchange drawn by him, accepted by respondent no.4 and co-accepted by Dena Bank and requested for finance by discounting the same. The bank agreed to the discount of the said 27 bills of exchange and after obtaining confirmation and co-acceptance from Dena Bank disbursed an aggregate sum of Rs.36,65,75,000/- from time to time to

respondent no.3, less the applicable discounting charges. On or about 15/3/2005 the petitioners came to know from their branch office at Vashi that bills of exchange co-accepted by Dena Bank's Thakurdwar Branch was dishonoured for payment by the said bank and, therefore, as a matter of abundant precaution the petitoner-bank addressed the letter dated 15/3/2005 to Dena Bank with details of 27 bills of exchange drawn by respondent no.3, accepted by respondent no.4 and co-accepted by Dena Bank and requested the bank to re-confirm the said bills. Dena Bank by its letter dated 17/3/2005 replied the said letter and stated that the signatures of the officers co-accepting the bills were forged and, therefore, it denied its liability to make payment to the petitioner-bank. This made the petitioner to file a police complaint on 21/3/2005 through its Nariman Point Branch with the Cuffe Parade Police Station alleging that fraud has been played by respondent nos.3 and 4. In the course of investigations by the police, the bank accounts of respondent nos.3,4 and 5 in different banks came to be frozen and report of the balance amount in each of the account frozen was submitted to the learned Additional Chief Metropolitan Magistrate. Application No.

129/N/2005 was filed on or about 29/6/2006 before the learned Addl. Chief Metropolitan Magistrate for return of the amount lying in the frozen accounts held by the respondent nos.3, 4 and 5 and/or the members of their families and/or the various firms established by them. The amount prayed to be refunded came to Rs.7,99,48,000/-. This application came to be opposed by respondent nos. 3, 4 and 5 on various grounds and mainly on the ground that while the complaint arising from C.R. No.27 of 2005 (C.C. No.130/PW/2005) was pending, there was no prima facie material before the court to hold that the amount lying in the frozen accounts was a stolen property.

4. The Senior Inspector of Police, Unit-I, Economic Offences Wing, Crime Branch, CID, Mumbai submitted a reply in response to the application submitted by the petitioner-bank and in the said reply it was stated that the petitioner-bank was defrauded to the tune of Rs.36,65,75,000/- by producing the bills of exchange. During the course of investigations it was revealed that the arrested accused (respondent nos.3 to 5) had hatched criminal conspiracy to raise funds by taking bill discounting

facility from the bank by producing false/fake sale purchase transaction and without doing actual transaction. They entered into a transaction on paper only and siphoned off the amount of Rs.36,65,75,000/-. The total amount freezed from the accused and the beneficiaries came to the tune of Rs.7,81,40,563.96 and an amount of Rs.20,43,000/- was utilised by the respondent no.3 and the seized amount lying in various accounts which were frozen belonged to the complainant-bank. Under these circumstances, the police stated that they had no objection if the amount was returned to the petitioner-bank.

5. The learned Additional Chief Metropolitan Magistrate, after hearing all the parties, held that the application by the bank could not be allowed just because its a big bank and while deciding the issue of return of property, the court shall require to take into consideration the various factors such as, whether the amount freezed by the police is tainted money, whether it is concerned with the crime, whether the applicant is only the person, who claims its custody etc. The court further held that it was difficult to cone to the conclusion that the frozen

money belongs to the applicant-bank only and not to any other person. If further held that stolen money if deposited in the bank, becomes property of the bank and, therefore, it cannot be presumed as a stolen property within the meaning of Section 410 of IPC. When there was a dispute over the frozen amount, it was just and fair not to allow anybody to withdraw the amount and it is better to allow the amount to remain with the concerned banks in the frozen accounts.

6. Section 102 of Cr.P.C. deals with the power of police officer to seize certain property and states that any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence and every such police officer shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bound undertaking to produce the property before the Court as and when required and to give to the further orders of the Court as to the disposal of the same. In the case of

State of Maharashtra vs. Tapas D. Neogy [(1999) 7 SCC 685] the Supreme Court held that bank account of the accused or any of his relations is "property" within the meaning of Section 102 of Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence which the police officer is investigating into.

7. Section 457 of Cr.P.C. reads as under:-

> "**457. Procedure by police upon seizure of property**.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such

property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

. Subsection (1) empowers the Magistrate to make such order as he may thinks fit respecting the disposal of the seized property by any police officer and which is not produced before the court and if such person cannot be ascertained, respecting the custody and production of such property. However, as per Subsection (2), if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate

thinks fit and if such person is unknown, the Magistrate may detain it and shall in such case issue a proclamation specifying the articles of which such property consists.

8. In the instant case, though the names of the persons who are holders of the frozen accounts are known or the identity of the firms is known, it is not certain at this moment whether the entire amount standing in these frozen accounts, as at present, has passed through the amounts released by the petitioner-bank in favour of the respondent no.3 or in favour of his firm M/s. Suriyaa International, though prima facie the report submitted by the police shows that the said amounts are from the moneys siphoned off by the respondent no.3 and from the amounts received by him from the petitioner-bank. It is during the trial only that the persons entitled to receive the said amounts or whether the petitioner-bank is entitled to receive the said amounts will have to be decided. In any case, the amounts are lying either in the nationalised bank or some of the private banks, including the petitioner-bank and, therefore, they are not an idle investment as far as those banks are

concerned. No doubt the amount is not available to the petitioner-bank but at the same time it cannot be said that it is an idle amount and not in circulation in the economy. It is true that if the amount is allowed to be withdrawn by the petitioner-bank it would earn much more interest than it could accrue by allowing it to remain in the frozen accounts but that alone cannot be a reason to allow the petitioner-bank to withdraw the money. The learned counsel for the bank has placed on record an affidavit in terms of an undertaking by the petitioner-bank and pursuant to the resolution passed by its Board that the bank is willing to furnish an undertaking that as and when required the amount will be remitted back to the trial court. Such an offer was made before the trial court, as well. What is important is the satisfaction of the conditions set out in Section 457 of Cr.P.C. regarding the identity of the person entitled to the possession of the amount lying in the frozen accounts and as of now it is not possible to say for sure that the said amount is part of the money siphoned off by respondent no.3 on receipt of the same from the petitioner-bank. The trial court, therefore, rightly held that the source of money coming into the frozen

accounts could not be ascertained at this stage for deciding the application under Section 457 of Cr.P.C. and, therefore, the view taken by the trial court in rejecting the application of the petitioner-bank is a possible view and it cannot be termed as perverse or patently erroneous. Hence, there is no case made out to call for interference under the supervisory powers of this court under Article 227 of the Constitution in the impugned order.

9. The petition is, therefore, rejected summarily.

10. Criminal Application No. 94 of 2007 does not survive and shall stand disposed as such.

(B.H. Marlapalle,J.)